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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,208	01/12/2004	B. Robert Mozayeni	05162.0004.CPUS13	8736
22930 7590 12/09/2008 HOWREY LLP - DC C/O IP DOCKETING DEPARTMENT 2941 FAIRVIEW PARK DR, SUITE 200 FALLS CHURCH, VA 22042-2924				
			EXAMINER ROZANSKI, MICHAEL T	
			ART UNIT 3768	PAPER NUMBER
			MAIL DATE 12/09/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/755,208

Applicant(s)

MOZAYENI ET AL.

Examiner

MICHAEL ROZANSKI

Art Unit

3768

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on arguments filed 11/12/08.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

The finality of the rejection of the last Office action is withdrawn and the amendment was entered.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 3-20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-33 of U.S. Patent No. 6,656,122 in view of Wallace et al (US 6,254,628).

Davidson et al '122 disclose steps of obtaining a first set of cerebrovascular blood flow data including generating a plurality of blood flow factor values for the blood vessel of the patient. The blood flow factor values are correlated and blood flow is assessed. Davidson et al do not disclose inserting a stent at a location within the

lumen, the location being based upon the assessed blood flow. However, Wallace et al teach of inserting a stent into intra-cranial blood vessels to counteract localized flow constriction, such as providing therapy for aneurysms (col 4, lines 35-48). It would have been obvious to modify Davidson et al, as taught by Wallace et al, because Davidson et al teach treatment regimens from a condition characterized by increased intracranial pressure and Wallace et al provide one technique (stenting) for treatment. Therefore, one in possession of the elements and steps described above would necessarily be in possession of the elements and steps of the current invention.

Claims 1 and 3-20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-27 of U.S. Patent No. 7,104,958 in view of Wallace et al (US 6,254,628).

Crutchfield et al '958 disclose steps of obtaining a first set of cerebrovascular blood flow data including generating a plurality of blood flow factor values for the blood vessel of the patient. The blood flow factor values are correlated and blood flow is assessed (see claim 1). Crutchfield et al do not disclose inserting a stent at a location within the lumen, the location being based upon the assessed blood flow. However, Wallace et al teach of inserting a stent into intra-cranial blood vessels to counteract localized flow constriction, such as providing therapy for aneurysms (col 4, lines 35-48). It would have been obvious to modify Crutchfield et al, as taught by Wallace et al, because Crutchfield et al treatment regimens from a condition characterized by increased intracranial pressure and Wallace et al provide one technique (stenting) for

treatment. Therefore, one in possession of the elements and steps described above would necessarily be in possession of the elements and steps of the current invention.

Claims 1 and 3-20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-44 of U.S. Patent No. 6,692,443 in view of Wallace et al (US 6,254,628).

Crutchfield et al '443 disclose steps of obtaining a first set of cerebrovascular blood flow data including generating a plurality of blood flow factor values for the blood vessel of the patient. The blood flow factor values are correlated and blood flow is assessed (see claim 1). Crutchfield et al do not disclose inserting a stent at a location within the lumen, the location being based upon the assessed blood flow. However, Wallace et al teach of inserting a stent into intra-cranial blood vessels to counteract localized flow constriction, such as providing therapy for aneurysms (col 4, lines 35-48). It would have been obvious to modify Crutchfield et al, as taught by Wallace et al, because Crutchfield et al treatment regimens from a condition characterized by increased intracranial pressure and Wallace et al provide one technique (stenting) for treatment. Therefore, one in possession of the elements and steps described above would necessarily be in possession of the elements and steps of the current invention.

Claims 1 and 3-20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-34 of U.S. Patent No. 6,723,051 in view of Wallace et al (US 6,254,628).

Davidson et al '051 disclose steps of obtaining a first set of cerebrovascular blood flow data including generating a plurality of blood flow factor values for the blood vessel of the patient. The blood flow factor values are correlated and blood flow is assessed. Davidson et al do not disclose inserting a stent at a location within the lumen, the location being based upon the assessed blood flow. However, Wallace et al teach of inserting a stent into intra-cranial blood vessels to counteract localized flow constriction, such as providing therapy for aneurysms (col 4, lines 35-48). It would have been obvious to modify Davidson et al, as taught by Wallace et al, because Davidson et al teach treatment regimens from a condition characterized by increased intracranial pressure and Wallace et al provide one technique (stenting) for treatment. Therefore, one in possession of the elements and steps described above would necessarily be in possession of the elements and steps of the current invention.

Claims 1 and 3-20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-41 of U.S. Patent No. 6,699,193 in view of Wallace et al (US 6,254,628).

Crutchfield et al '193 disclose steps of obtaining a first set of cerebrovascular blood flow data including generating a plurality of blood flow factor values for the blood vessel of the patient. The blood flow factor values are correlated and blood flow is assessed. Crutchfield et al do not disclose inserting a stent at a location within the lumen, the location being based upon the assessed blood flow. However, Wallace et al teach of inserting a stent into intra-cranial blood vessels to counteract localized flow

constriction, such as providing therapy for aneurysms (col 4, lines 35-48). It would have been obvious to modify Crutchfield et al, as taught by Wallace et al, because Crutchfield et al teach treatment regimens from a condition characterized by increased intracranial pressure and Wallace et al provide one technique (stenting) for treatment. Therefore, one in possession of the elements and steps described above would necessarily be in possession of the elements and steps of the current invention.

Claims 1 and 3-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 16-24 of U.S. Patent Application No. 10/768,640 in view of Wallace et al (US 6,254,628).

Crutchfield et al '640 disclose steps of obtaining a first set of cerebrovascular blood flow data including generating a plurality of blood flow factor values for the blood vessel of the patient. The blood flow factor values are correlated and blood flow is assessed (see claim 1). Crutchfield et al do not disclose inserting a stent at a location within the lumen, the location being based upon the assessed blood flow. However, Wallace et al teach of inserting a stent into intra-cranial blood vessels to counteract localized flow constriction, such as providing therapy for aneurysms (col 4, lines 35-48). It would have been obvious to modify Crutchfield et al, as taught by Wallace et al, because Crutchfield et al treatment regimens from a condition characterized by increased intracranial pressure and Wallace et al provide one technique (stenting) for treatment. Therefore, one in possession of the elements and steps described above would necessarily be in possession of the elements and steps of the current invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1 and 3-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-29 of U.S. Patent Application No. 11/387,049 in view of Wallace et al (US 6,254,628).

Mozayeni et al '049 disclose steps of obtaining a first set of cerebrovascular blood flow data including generating a plurality of blood flow factor values for the blood vessel of the patient. The blood flow factor values are correlated and blood flow is assessed (see claim 1). Mozayeni et al do not disclose inserting a stent at a location within the lumen, the location being based upon the assessed blood flow. However, Wallace et al teach of inserting a stent into intra-cranial blood vessels to counteract localized flow constriction, such as providing therapy for aneurysms (col 4, lines 35-48). It would have been obvious to modify Mozayeni et al, as taught by Wallace et al, because Mozayeni et al treatment regimens from a condition characterized by increased intracranial pressure and Wallace et al provide one technique (stenting) for treatment. Therefore, one in possession of the elements and steps described above would necessarily be in possession of the elements and steps of the current invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

Applicant's arguments with respect to claims 1 and 3-20 have been considered but are moot in view of the new ground(s) of rejection. It is noted that the terminal disclaimer filed 11/12/08 is not approved.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL ROZANSKI whose telephone number is (571)272-1648. The examiner can normally be reached on Monday - Friday, 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric F Winakur/
Primary Examiner, Art Unit 3768

MR